

1 PAUL B. SNYDER  
2 United States Bankruptcy Judge  
3 1717 Pacific Ave, Suite 2209  
4 Tacoma, WA 98402

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5 April 13, 2006

6 MARK L. HATCHER  
7 CLERK U.S. BANKRUPTCY COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA  
10 \_\_\_\_\_DEPUTY

11 **UNITED STATES BANKRUPTCY COURT**  
12 **WESTERN DISTRICT OF WASHINGTON AT TACOMA**

13 In re:

14 DENNIS G. BAILEY and ROBIN DENISE  
15 BAILEY,

16 Debtors.

Case No. 02-47325

**MEMORANDUM DECISION**

**NOT FOR PUBLICATION**

17 THIS MATTER came before the Court at an evidentiary hearing held on April 5, 2006,  
18 on the motion by Wells Fargo Bank, N.A. (Wells Fargo) to set aside an Order Sustaining  
19 Objection to Proof of Claim #23 entered on June 7, 2005, filed by Dennis Bailey and Robin  
20 Bailey (Debtors), and an Alternative Motion to Value Collateral and Motion for Turnover filed  
21 by the Debtors. Based on the pleadings, testimony, exhibits and arguments presented, the  
22 Court's findings of fact and conclusions of law are as follows:

23 **FINDINGS OF FACT**

24 On February 2, 1999, the Debtors purchased a 1996 Chrysler Town & Country  
25 extended passenger van (Vehicle). Financing was provided in the amount of \$25,171.35 by  
First Security Bank, who properly perfected its security interest in the Vehicle. Subsequently  
First Security Bank merged with Wells Fargo. On July 26, 2002, the Debtors filed a voluntary  
petition for relief under Chapter 13, Title 11. The Debtors listed the value of the Vehicle as

1 \$4,000 in Schedule B of their bankruptcy petition. On November 6, 2002, Wells Fargo filed a  
2 timely proof of claim, bifurcating its claim between the secured portion in the amount of  
3 \$10,150 and an unsecured claim for the balance of \$3,264.31. Wells Fargo valued the  
4 Vehicle for purposes of its proof of claim by using the National Automotive Dealers  
5 Association (NADA) guidelines for used vehicles. On November 7, 2002, the Chapter 13 Plan  
6 (Plan) was confirmed. During the course of the Chapter 13 Wells Fargo received distributions  
7 from the Chapter 13 Trustee (Trustee) totaling \$10,906.95 on its secured claim, and but for  
8 this proceeding, would have been paid in full from proceeds held by the Trustee.  
9

10 On March 22, 2005, the Debtors filed an Objection to Proof of Claim #23 and Notice of  
11 Hearing on Objection (Objection). The one and one-half page pleading signed solely by  
12 counsel for the Debtors indicated only that the Debtors estimated the fair market value of the  
13 Vehicle secured by Wells Fargo to be \$4,000, and the amount of the Wells Fargo secured  
14 claim should be limited to \$4,000. No basis was given for the Debtors' estimate and no  
15 supporting documents were filed with the objection. The Debtors' Proof of Service indicated  
16 that the Objection was delivered through U.S. and certified mail to Dick Kovacevich,  
17 Chairman/CEO of Wells Fargo Bank at 1 Montgomery Street, San Francisco, California, and  
18 to Barbara Hedrick at P.O. Box 30095, Walnut Creek, California, via mail and electronic  
19 means. The testimony presented at the evidentiary hearing established that mail sent to the  
20 Chairman of Wells Fargo was sent to an incorrect address. Mail sent to Ms. Hedrick was sent  
21 pursuant to a request filed with the Clerk of the Court by Wells Fargo, asking that all payments  
22 in the Chapter 13 be remitted to the Walnut Creek address. On June 7, 2005, the Court  
23 signed an uncontested default Order Sustaining Objection to Proof of Claim #23 (Order). The  
24 Order had the effect of disallowing retroactively the paid claim of Wells Fargo. The Trustee  
25

1 then sent a letter requesting Wells Fargo return funds previously paid. This request has led to  
2 the instant evidentiary hearing.

### 3 **CONCLUSIONS OF LAW**

4 A party seeking relief from a judgment or order can do so under Fed. R. Civ. P. 60(b).  
5 Fed. R. Bankr. P. 9024 encompasses Fed. R. Civ. P. 60(b), and additionally provides that  
6 “reconsideration of an order allowing or disallowing a claim against the estate entered without  
7 a contest is not subject to the one year limitation prescribed in Rule 60(b).” Presumably this is  
8 because 11 U.S.C § 502(j) allows for reconsideration of a disallowed claim for cause  
9 according to the equities of the case. See also Fed. R. Bankr. P. 3008. The Court concludes  
10 that the facts of this case lend itself to reconsidering the Court’s uncontested default Order  
11 disallowing the Wells Fargo proof of claim.  
12

13 A proof of claim is deemed allowed unless a party in interest objects under 11 U.S.C. §  
14 502(a). Fed. R. Bankr. P. 3001(f) provides that “[a] proof of claim executed and filed in  
15 accordance with these rules shall constitute prima facie evidence of the validity and amount of  
16 the claim.” This rule creates an evidentiary presumption of validity as to liability and amount  
17 for a properly filed proof of claim. In re Garner, 246 B.R. 617, 620 (9th Cir. BAP 2000).  
18 Except for evidence of proof of perfection of a security interest, the federal rules of bankruptcy  
19 do not require, however, that a claimant file evidence along with the proof of claim in order to  
20 attain prima facie effect. Garner, 246 B.R. at 621.  
21

22 It is incumbent on the party seeking to defeat the proof of claim, however, to “come  
23 forward with sufficient evidence and ‘show facts tending to defeat the claim by probative force  
24 equal to that of the allegations of the proofs of claim themselves.’” In re Lundell, 223 F.3d  
25 1035, 1039 (9th Cir. 2000) (citing In re Holm, 931 F. 2d 620, 623 (9th Cir. 1991)). In the

1 instant case, the Debtors' objection consisted only of a statement by counsel that the Debtors  
2 estimate the fair market value of the Vehicle at \$4,000. This statement was apparently based  
3 on Schedule B of the Debtors' bankruptcy petition. No rationale, support or evidence was  
4 given for the clearly incorrect value placed on the Vehicle, as the Debtors' own appraiser later  
5 testified that the replacement value of the Vehicle as of the petition date was \$8,265.

6 Under the facts of this case, the Court concludes that it is not necessary to decide  
7 whether the Debtors gave proper notice of their objection to the Wells Fargo proof of claim.  
8 Primarily this is because the Debtors initially failed to present adequate evidence, or any  
9 evidence, sufficient to defeat the Wells Fargo proof of claim. Taking into consideration the  
10 lack of evidence to support the Debtors' original valuation and the requested disallowance and  
11 disgorgement 31 months after confirmation, the Court concludes that pursuant to 11 U.S.C. §  
12 502(j) the Court's Order of June 7, 2005 shall be reconsidered and vacated. Wells Fargo's  
13 November 6, 2002 proof of claim shall be deemed allowed.

14  
15 DATED: April 13, 2006

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18 Paul B. Snyder  
19 U.S. Bankruptcy Judge  
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